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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 525

RALPH BECKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. Appendix "A", i–v; R. 61–66) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 17, 1954 (Pet. Appendix "B", vi; R. 69). The petition for a writ of certiorari was filed on January 10, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the evidence supports the verdict that petitioner caused the transportation of a woman

in interstate commerce for the purpose of having illicit relationships with her.

STATUTE INVOLVED

18 U. S. C. 2422 provides:

> Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000.00 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was convicted in the District Court for the District of Minnesota for knowingly transporting Lila Lane from Minneapolis, Minnesota, to Medford, Wisconsin, on or about November 27, 1953, for the purpose of prostitution, debauch-

ery and other immoral purposes, in violation of the Mann Act (18 U. S. C. 2422) (R. 1–2, 51). He was sentenced to a term of imprisonment of one year and to a fine of $750.00 (R. 52).[1] On appeal, the judgment of conviction was affirmed (R. 69).

The following evidence was adduced at the trial:

On November 2, 1953, Lila Lane began her employment as an exotic dancer at petitioner's hotel in Medford, Wisconsin. Although the engagement was to run for one week, it was extended from week to week, pursuant to the option contained in the contract. (R. 2–3, 7, 8, 9; Plf. Ex. 3, R. 57–58.)

On November 23 or 24, Lila Lane went to Minneapolis to visit her daughter for Thanksgiving (R. 4, 8, 9). She testified that at the time she left she intended to return to Medford to continue her engagement under the contract (R. 8, 9). She left her dancing clothes at the hotel (R. 8, 9). There is no evidence that she had a round trip ticket or that she had any definite date in mind for the return trip.

While Lila Lane was in Minneapolis petitioner telephoned her several times, begging her to come back, telling her that he loved her, that he could not live without her, and that she "just had to come back" (R. 4, 5, 8, 14, 17, 18, 19). She re-

[1] Petitioner was indicted in three counts (R. 1–2). Count one was dismissed during the trial and a judgment of acquittal was entered as to count 3 (R. 55).

turned to Medford on November 28 or 29 (R. 10). Petitioner paid the travelling expenses for this trip (R. 4, 5, 14). Upon her return to Medford, Lila Lane for the first time engaged in illicit relations with petitioner (R. 5, 10).

The agent through whom petitioner engaged Lila Lane testified that, when she was in Minneapolis around Thanksgiving, she told him she did not know whether she wanted to or would go back (R. 22). Petitioner called the agent and asked him whether Lila Lane was coming back to Medford. When the agent said he did not know, petitioner asked for another dancer (R. 22).

The final charge to the jury included the following (R. 45, 48):

> You are further instructed that in order to find the defendant guilty you must be satisfied beyond a reasonable doubt that the defendant persuaded, induced, enticed or coerced the female in question to travel from Minneapolis, Minnesota, to Medford, Wisconsin, with the intent that she engage in prostitution, debauchery or other immoral practices and that he caused her to be transported from Minneapolis, Minnesota, to Medford, Wisconsin, for such purposes. If he did not have such intent when he persuaded, induced, enticed or coerced her to travel from Minneapolis to Medford, Wisconsin, or caused her to be transported from Minneapolis to Medford, you

should find him not guilty of the offense charged regardless of whether you are satisfied he ultimately had illicit relations with her after she got to Medford. If an interstate journey is planned and made without any immoral purpose in mind at the time, no crime is committed regardless of what may happen thereafter. An immoral purpose first conceived at the end of the journey is not sufficient to constitute an offense under the White Slave Traffic Act. It is not the province of the Federal Government to punish prostitution, debauchery, etc., when standing alone and unconnected with interstate commerce. Such offenses are usually offenses under state laws and punishable by prosecution in state and local courts.

* * * * *

You are instructed, members of the jury, that even if one of the purposes of the transportations involved herein was for the purpose of having Lila Lane engage in exotic dancing, that is no defense to this defendant, if you find beyond a reasonable doubt that the defendant at the time of said transportation knowingly and intentionally caused her to be transported for the purposes of prostitution, debauchery and other immoral practices. You are further instructed, members of the jury, that the Government must prove the immoral purpose to have been not a mere incident but rather an efficient purpose prompting and impelling defendant to

cause Lila Lane to be transported on the occasions alleged in the indictment under the two counts.

If you find beyond a reasonable doubt that the defendant, Ralph Becker, caused Lila Lane to be transported in the various counts alleged in the indictment for the purpose of having sexual intercourse and sexual relations with her, and that she engaged in other acts of debauchery and other immoral practices, and if you find that such transportations were a means to that end, you may find the defendant guilty as charged in Counts II and III of the indictment, or any one of such counts as the jury determines defendant is guilty beyond a reasonable doubt.

ARGUMENT

Petitioner urges that this case is controlled by *Mortensen* v. *United States,* 322 U. S. 369, in which this Court held that, where operators of a house of prostitution took two of their employees on a vacation trip, the interstate journey could not be said to have been for the purpose of or as a means of effecting an immoral purpose. In this case, however, although Lila Lane testified that, when she left, she intended to return, there was evidence that, when she arrived in Minneapolis, she became uncertain as to her future intentions. The jury could properly find that her actual return was induced by petitioner's protestations of love and his urging that she return.

It is petitioner's intention which is significant in determining his guilt. Under the evidence, the jury could properly find that his telephone calls were for the purpose of inducing Lila Lane to return to Wisconsin so that he could have illicit relations with her. The case is thus, as the Court of Appeals held, clearly distinguishable from *Mortensen*. Cf. *Langford* v. *United States*, 178 F. 2d 48 (C. A. 9), certiorari denied, 339 U. S. 938, where there was evidence that, while the beginning of a journey was for the legitimate purpose of a Mexican marriage, the events in Mexico gave rise to a different purpose for the return trip, i. e., that the girl resume the practice of prostitution on her return to the United States. The issue presented involves merely the application of an established rule of law to the facts of this case, and presents no question warranting review by this Court.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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